

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-6329 PJW	Date	July 3, 2012
Title	<i>Juan Medina, et al. v. Pile Trucking Inc., et al.</i>		

Present: The Honorable		Jay C. Gandhi, United States Magistrate Judge	
Beatriz Martinez			
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	

Proceedings: **(IN CHAMBERS) ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST DEFENDANTS AND DEFENDANTS' COUNSEL FOR FAILURE TO COMPLY WITH COURT ORDER PURSUANT TO FED. R. CIV. P. 16**

The Court is contemplating the imposition of sanctions against Defendants and Defendants' counsel for an apparent violation of this Court's Order of March 7, 2012.

In alignment with Judge King's decision of June 20, 2012, [Dkt. No. 77.], the Court now provides Defendants and Defendants' counsel a specific opportunity to be heard before any sanctions are imposed, and to provide whatever showing and arguments Defendants and Defendants' counsel may wish to make on the matter. *See Ayers v. City of Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990).

The Court's bases for its sanctions are described in detail in this Court's decision of May 25, 2012. The parties are referred to that Order for additional detail. [Dkt. No. 41.]

In sum, the Court ordered Defendants and Defendants' lead counsel to be present for a settlement conference on May 10, 2012. [Dkt. No. 26.] The Court instructed that attendance was mandatory and that failure to comply would result in sanctions. None of the Defendants appeared for the settlement conference. Defendants' lead counsel also failed to appear. Defendants' counsel acknowledged their violation of the Court's March 7, 2012 Order, including the failure of Defendants to appear as ordered.

Nonetheless, the Court proceeded with the settlement conference because Plaintiffs

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and their lead counsel appeared, along with a Spanish-speaking interpreter for Plaintiffs. Unfortunately, the follow-up settlement conference proved unfruitful as well, and the non-appearances hampered the productivity and progress of discussions. *See, e.g., Dunaway v. Estate of Aiken*, 2011 WL 6211228, at *2 (S.D. Ind. Dec. 14, 2011) (“[C]ourt-ordered settlement conferences are serious attempts to settle claims and are intended to convey information helpful and important to the ultimate decision makers. The parties who attend settlement conferences owe it to each other and the court to take these conferences seriously.”).

The Court intends to exercise its sanctioning authority under Fed. R. Civ. P. 16. *See also Ayers*, 895 F.2d at 1269; *Ford v. Alfaro*, 785 F.2d 835, 837 (9th Cir. 1990) (magistrate judge issued Rule 16 sanctions without questioning the judge’s authority to do so); *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) (authority to sanction under Fed. R. Civ. P. 37); *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 747 (9th Cir. 1990) (authority to sanction under Fed. R. Civ. P. 11).

The Court is contemplating sanctions in the following amounts:

1. Sanctions in the amount of \$1,500.00 *each* as to Defendants Alvin Flynn and Defendant Pile Trucking, Inc.
2. Sanctions in the amount of \$3,000.00 as to Barry C. Snyder.
3. Sanctions in the amount of \$1,500.00 as to Sean R. Burnett.
4. Sanctions in the amount of \$500.00 as to Gregory M. Smith.

While there are technically three defendants, it appears that Defendant “Earl Pile Trucking” may not be an actual entity and, therefore, no sanctions are contemplated against “Pile Trucking” separately, so as not to impose double harm on any Defendant.

With respect to Defendants’ counsel, the Court intends to calibrate the specific amount based upon their proportionate culpability. Here, Barry C. Snyder appears to merit \$3,000.00, at a minimum, as lead counsel. Sean R. Burnett appears to merit \$1,500.00. The Court is cognizant that, unlike Snyder and Burnett, Gregory M. Smith

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may have lacked supervisory responsibility in this case, but he did bear the duty, like all counsel, to follow the Court's Order. Smith appears to merit the smaller amount of \$500.00.

The Court is further contemplating that Plaintiffs and their counsel should be granted leave to file an application, sufficiently supported with evidence, seeking a recoupment of the fees and costs, including attorneys' fees and expert costs, that Plaintiffs and their counsel incurred for their preparation, attendance, and participation in the settlement conference at issue.

Accordingly now, Defendant Alvin Flynn, Defendant Pile Trucking Inc., Barry C. Snyder, Sean R. Burnett, and Gregory M. Smith, and each of them, shall show all cause, if any there be, why each of them should not be sanctioned for the reasons stated above, including the alleged sanctionable conduct of failing to comply with the Court's Order of March 7, 2012 and pursuant to the Court's sanctioning authority under Fed. R. Civ. P. 16 and Ninth Circuit precedent, and for any other reasons whatsoever that Defendants and Defendants' counsel may wish to submit for consideration on the sanctions issue.

In response to the foregoing Order to Show Cause, Defendants and Defendants' counsel shall submit their brief(s), along with any evidence, **on or before July 24, 2012.**

Counsel are reminded to file mandatory paper chambers copies.

It is so ordered.

cc: Hon. George H. King
Parties of Record

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Initials of Preparer	bm			